

WASHINGTON - Recognizing the economic pressures facing emerging public companies as a result of Sarbanes-Oxley regulations, U.S. Reps. Mark Kirk (R-IL) and Steve Israel (D-NY) introduced legislation last week that would reduce compliance costs for the nation's most important economic engine – small businesses. The bill (H.R. 1780) follows the recommendations of the U.S. Securities and Exchange Commission's (SEC) own advisory committee to help small businesses with the costs of implementing Section 404 of Sarbanes-Oxley, which regulates internal control structures and procedures for financial reporting. The announcement comes on the eve of the SEC's open meeting regarding the Public Company Accounting Oversight Board's (PCAOB) proposed auditing standard for the Section.

“While the purpose of Sarbanes-Oxley was to increase transparency in publicly-traded corporations, Section 404 has actually created more privately-held companies,” said Congressman Kirk. “Unlike current law, which leaves companies swirling in an unwinnable ‘compliance Bermuda Triangle,’ these reasonable, modest reforms are in line with the recommendations announced by the SEC only months ago. This legislation will ensure that the lifeblood of our economy – fast-growth small businesses – are not ‘priced out’ of American markets.”

The Small Business Securities Protection Act would restore U.S. financial leadership by providing regulatory relief for small public companies. Following the recommendations of the SEC's own Smaller Public Company Advisory Committee, the legislation lifts some of the costliest regulations for companies comprising 5 percent of public markets that have:

1. A total market capitalization of less than \$700,000,000;
2. Fewer than 300 equity stakeholders; or
3. Been regulated by the SEC for less than one year.

The reforms proposed in the Smaller Public Company Securities Protection Act are consistent with the SEC's goal of scalable, risk-based regulation, and is soundly grounded in the work of the SEC's own Smaller Public Company Advisory Committee. Approximately 95 percent of all companies would remain under full Section 404 rules under the proposed legislation.

The bill follows the recommendations of the SEC's Advisory Committee to clearly define key

accounting terms like “material,” “reasonable,” “significant,” and “sufficient”—terms that if left undefined lead to millions spent in pointless litigation. The bill would allow consultants advising on Sarbanes-Oxley compliance to actually talk to accountants so differences could be resolved.

With the introduction of the Smaller Public Company Securities Protection Act, Congressman Kirk is putting his support behind fast-growth companies that spend millions of dollars in accounting research that only auditors review. That means less money for new stores, new products and new jobs. As the Chief Finance Officer of Whole Foods recently commented to the SEC, “...we spent even more time drilling into insignificant details...spending millions on accounting research.”

On April 4, the SEC will hold an open meeting to discuss the need for change in accounting guidelines enforced by the PCAOB. “Effective and efficient Sarbanes-Oxley Section 404 implementation is vitally important for investors of public companies,” SEC Chairman Christopher Cox said recently. “For this reason, the SEC and the PCAOB have been working together to improve Section 404 procedures to establish a risk-based, top-down approach that is scalable for companies of all sizes.”